

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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HSBC BANK, USA, N.A., AS TRUSTEE  
ON BEHALF OF ACE SECURITIES  
CORP. HOME EQUITY LOAN TRUST  
AND FOR THE REGISTERED HOLDER  
OF ACE SECURITIES CORP. HOME  
EQUITY LOAN TRUST, SERIES 2006-  
ASAP5, ASSET BACKED PASSTHROUGH  
CERTIFICATES,

Plaintiff,

v.

FIDELITY NATIONAL TITLE GROUP, INC.;  
CHICAGO TITLE INSURANCE COMPANY;  
TICOR TITLE OF NEVADA, INC.; DOE  
INDIVIDUALS I through X; and ROE  
CORPORATIONS XI through XX, inclusive,

Defendants.

Case No. 2:21-cv-00153-KJD-NJK

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

Before the Court are Plaintiff's Motion to Remand (ECF #6) and Motion for Attorney Fees (ECF #7). Defendant responded in opposition (ECF #18) to which Plaintiff replied (ECF #22).

**I. Background**

On May 11, 2021, the parties stipulated to stay this action pending the appeal of a similar case. (ECF #26). The Ninth Circuit issued its ruling on the appeal on November 5, 2021. Wells Fargo Bank, N.A. v. Fidelity Nat'l Title Ins. Co., No. 19-17332, 2021 WL 5150044 (9th Cir. Nov. 5, 2021). The parties have not requested that the stay be lifted, but the purpose of the stay was to await the resolution of that appeal. As such, the Court lifts the stay to rule on the instant motion. Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 2007) ("[A] district court possesses the inherent power to control its docket and promote efficient use of judicial resources.").

1 This is a breach of contract and insurance bad faith lawsuit arising from a title insurance  
 2 claim. (ECF #6 at 2). HSBC Bank, USA, N.A. (“HSBC Bank”) is the beneficiary of a deed of  
 3 trust encumbering real property in Nevada. Id. HSBC Bank alleges that Ticor Title of Nevada,  
 4 Inc. (“Ticor Nevada”) and Chicago Title Insurance Company (“Chicago Title”) entered into a  
 5 contractual relationship insuring the deed of trust in superior position to competing liens. Id. at 3.  
 6 The Homeowners Association (“HOA”) eventually foreclosed on its lien in April 2015. Id.  
 7 HSBC Bank filed the instant lawsuit in Nevada state court on January 28, 2021. Id. at 4. Chicago  
 8 Title removed the case to this Court on the same day. Id. HSBC Bank now moves for remand,  
 9 arguing that Chicago Title’s “snap removal” is procedurally improper. Id. Chicago Title contends  
 10 that under the plain language of the removal statute, snap removal is proper. Id. at 14. Chicago  
 11 Title also argues that Ticor Nevada is a fraudulently joined defendant who was only added to  
 12 trigger the forum defendant rule and prevent removal to federal court. Id. at 14. Chicago Title is  
 13 a Florida corporation with its principal place of business in Florida; Fidelity National Title  
 14 Group, Inc. is a Delaware corporation with its principal place of business in Florida; HSBC Bank  
 15 is a national banking association with its main office in Virginia; and Ticor Nevada is a Nevada  
 16 corporation with its principal place of business in Nevada. (ECF #1, at 2).

17 There are many similar actions currently being litigated in Nevada and this issue of snap  
 18 removal has become a common question. To date, six judges in the District of Nevada have ruled  
 19 on the issue.<sup>1</sup> Five, including this Court, have found that snap removal is improper and remanded  
 20 the cases to state court, while one judge has denied remand, ruling that the snap removal is an  
 21 acceptable practice according to the plain language of the statute.<sup>2</sup> The Court joins the majority  
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23 <sup>1</sup> See Deutsche Bank Nat’l Tr. Co. as Tr. for Am. Home Mortg. Inv. Tr. 2007-1 v. Old Republic Title Ins.  
 24 Grp., Inc., 532 F.Supp.3d 1004, 1010–11 n.3 (D. Nev. 2021); U.S. Bank Tr. Nat’l Ass’n v. Fidelity Nat’l Title Grp.,  
 25 Inc., No. 2:20-cv-02068-JCM-VCF, 2021 WL 223384 (D. Nev. Jan. 22, 2021); HSBC Bank USA, Nat’l Ass’n as Tr.  
 26 for Certificateholders of ACE Secs. Corp. Home Equity Loan Tr., Series 2007-MW1, Asset-Backed Pass-through  
 27 Certificates v. Fidelity Nat’l Title Grp., Inc., 508 F.Supp.3d 781 (D. Nev. 2020); Wells Fargo Bank, N.A. as Tr. of  
 28 Holders of Harborview Mortg. Loan Tr. Mort. Loan Pass-through Certificates, Series 2006-12 v. Fidelity Nat’l Title  
Grp., Inc., No. 2:20-cv-01849-APG-NJK, 2020 WL 7388621 (D. Nev. Dec. 15, 2020); Deutsche Bank Nat’l Tr. Co.  
v. Fidelity Nat’l Title Grp., Inc., No. 2:20-cv-01606-APG-BNW, 2020 WL 7360680 (D. Nev. Dec. 15, 2020); Sparks  
v. Mamer, No. 2:20-cv-0661-KJD-VCF, 2020 WL 6820796 (D. Nev. Nov. 20, 2020).

<sup>2</sup> See U.S. Bank, N.A. as Tr. to Wachovia Bank Nat’l Assoc. v. Fidelity Nat’l Title Grp., Inc., No. 2:21-cv-00339-GMN-VCF (D. Nev. Nov. 29, 2021).

1 of the judges in the District and finds that Defendant's snap removal prior to service was  
 2 improper and the forum defendant rule requires a remand to state court.

### 3 II. Legal Standard

4 Federal courts are courts of limited jurisdiction. See U.S. CONST. art. III, § 2, cl. 1; Owen  
 5 Equip. & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978). Accordingly, there is a strong  
 6 presumption against removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). A  
 7 defendant may remove any civil action from state court when the federal district court has  
 8 original jurisdiction. 28 U.S.C. § 1441(a). A diversity case cannot be removed if "any of the  
 9 parties in interest properly joined and served as defendants is a citizen of the State in which such  
 10 action is brought." Id. at § 1441(b)(2). Courts strictly construe the removal statute against  
 11 removal, and "[f]ederal jurisdiction must be rejected if there is any doubt as to right of removal  
 12 in the first instance." Gaus, 980 F.2d at 566. The removing party bears the burden of establishing  
 13 federal jurisdiction. California ex rel. Lockyer v. Dynegey, Inc., 375 F.3d 831, 838 (9th Cir.  
 14 2007).

15 Removal based on diversity jurisdiction requires complete diversity, meaning "the  
 16 citizenship of each plaintiff is diverse from the citizenship of each defendant." Caterpillar, Inc. v.  
 17 Lewis, 519 U.S. 61, 68 (1996). However, when "determining whether there is complete  
 18 diversity, district courts may disregard the citizenship of a non-diverse defendant who has been  
 19 fraudulently joined." Grancare, LLC v. Thrower by & through Mills, 889 F.3d 543, 548 (9th Cir.  
 20 2018) (citing Chesapeake & Ohio Ry. Co. v. Cockrell, 232 U.S. 146, 152 (1914)).

### 21 III. Analysis

22 Chicago Title argues that the plain language of the removal statute permits removal of  
 23 this action. Chicago Title focuses on the language of the statute, which states that diversity  
 24 actions may not be removed "if any of the parties in interest **properly joined and served** as  
 25 defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b)(2)  
 26 (emphasis added). This is known as the forum defendant rule. Chicago Title argues that because  
 27 it removed the action prior to any defendant being served, the forum-defendant rule does not  
 28 apply. Additionally, Chicago Title argues that Ticor Nevada, the forum defendant, was

1 fraudulently joined, and as such, the Court should ignore its citizenship when making a diversity  
 2 determination. HSBC Bank argues that this removal promotes gamesmanship by defendants and  
 3 undermines the purpose of the forum defendant rule.

4 A. Ticor Nevada was not Fraudulently Joined

5 Fraudulent joinder can be established two ways: “(1) actual fraud in the pleading of  
 6 jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-  
 7 diverse party in state court.” Grancare, LLC, 889 F.3d at 548 (quoting Hunter v. Philip Morris  
 8 USA, 582 F.3d 1039, 1044 (9th Cir. 2009)) (internal quotation marks omitted). Under the second  
 9 prong, a fraudulent joinder “fails to state a cause of action against the resident defendant” if “the  
 10 failure is obvious according to the settled rules of the state.” McCabe v. Gen. Foods Corp., 811  
 11 F.2d 1336, 1339 (9th Cir. 1987). Put differently, the defendant need show that a non-diverse  
 12 party joined in the action cannot be liable on any theory. Ritchey v. Upjohn Drug Co., 139 F.3d  
 13 1313, 1318 (9th Cir. 1998). “A defendant invoking federal court diversity jurisdiction on the  
 14 basis of fraudulent joinder bears a ‘heavy burden’ since there is a ‘general presumption against  
 15 [finding] fraudulent joinder.’” Grancare, LLC, 889 F.3d at 548 (9th Cir. 2018) (quoting Hunter,  
 16 582 F.3d at 1046). The Ninth Circuit has “declined to uphold fraudulent joinder rulings where a  
 17 defendant raises a defense that requires a searching inquiry into the merits of the plaintiff’s case,  
 18 even if that defense, if successful, would prove fatal.” Id.

19 Chicago Title argues that removal was proper because the only forum defendant, Ticor  
 20 Nevada, was fraudulently joined. (ECF #18, at 1). HSBC Bank brings five claims against Ticor  
 21 Nevada: (1) declaratory judgment on the insurance policy; (2) breach of contract; (3) bad faith  
 22 and breach of the covenant of good faith and fair dealing; (4) deceptive trade practices under  
 23 NRS § 41.600 and NRS § 598.0915; and (5) unfair practices in settling claims under NRS §  
 24 686A.310 (ECF #1, at 21–29).

25 The Court cannot find that HSBC Bank has failed to state a cause of action against Ticor  
 26 Nevada. Chicago Title contests the validity of HSBC Bank’s contract claims, alleging Ticor  
 27 Nevada was not a party to the contract. To support its assertion, Defendant argues that Ticor  
 28 Nevada did not underwrite the policy. In addition, Chicago Title attacks the alter-ego allegations

1 against Ticor Nevada as an alternative form of liability. However, Chicago Title largely  
 2 overlooks HSBC Bank's claims against Ticor Nevada for deceptive trade practices under NRS  
 3 41.600 and 598.0915 and unfair claim-settling practices under NRS 686A.310. Chicago Title's  
 4 only argument that these claims are fruitless is that the statute of limitations has expired given  
 5 the "purported misrepresentation occurred 15 years ago." (ECF #18, at 17). However, actions  
 6 "against a person alleged to have committed a deceptive trade practice . . . shall be deemed to  
 7 accrue when the aggrieved party discovers, or by the exercise of due diligence should have  
 8 discovered, the facts constituting the deceptive trade practice." NEV. REV. STAT. § 11.190(2)(d).  
 9 HSBC Bank alleges that it was not aware of deceptive trade practice until it discovered the  
 10 internal memoranda and guidelines that Defendants allegedly withheld. (ECF #22, at 13). The  
 11 fact that the purported misrepresentation occurred over 15 years ago, as Chicago Title argues, is  
 12 irrelevant. The important question is when HSBC Bank discovered or reasonably should have  
 13 discovered facts giving rise to the action. Based on the complaint, the claim likely occurred  
 14 within the statute of limitations period when HSBC discovered that defendants hid internal  
 15 memoranda and guidelines that concealed coverage.

16 At this stage in the litigation, the Court will not conduct a "searching inquiry into the  
 17 merits of the plaintiff's case against the forum defendant." HSBC Bank, 508 F.Supp.3d at 786  
 18 (internal citations omitted). Instead, the Court finds that there is a possibility that a state court  
 19 would find that the complaint states a cause of action against [the forum defendant . . . and] must  
 20 find that the joinder was proper." Id.

#### 21 B. Chicago Title's Snap Removal was Improper

22 Chicago Title argues that its snap removal is a valid means of avoiding the forum  
 23 defendant rule. It urges the Court to follow the appellate courts that have reviewed § 1441(b)(2)  
 24 and found the statute allows the tactic. HSBC Bank argues that allowing snap removal would  
 25 contravene the statute's purpose. Both sides acknowledge that the Ninth Circuit has yet to review  
 26 the specific question. The Courts in this District who have reached the question have almost  
 27 uniformly held that 'snap removal' is improper under 28 U.S.C. § 1441(b)(2). Deutsche Bank  
 28 Nat'l Tr. Co. as Tr. for Am. Home Mortg. Inv. Tr. 2007-1 v. Old Republic Title Ins. Grp., Inc.,

1 532 F.Supp.3d 1004, 1010–11 n.3 (D. Nev. 2021) (collecting cases).<sup>3</sup>

2 When interpreting a statute, the Court looks first to the plain language of the statute to  
 3 discern congressional intent. See, e.g., Zuress v. Donley, 606 F.3d 1249, 1252–53 (9th Cir.  
 4 2010). “It is well established that when the statute’s language is plain, the sole function of the  
 5 courts—at least where the disposition required by the text is not absurd—is to enforce it  
 6 according to its terms.” Lamie v. U.S. Trustee, 540 U.S. 526, 534 (2004) (quoting Hartford  
 7 Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6, (2000)) (internal quotation  
 8 marks omitted). The court “may not adopt a plain language interpretation of a statutory provision  
 9 that directly undercuts the clear purpose of the statute.” Albertson’s, Inc. v. C.I.R., 42 F.3d 537,  
 10 545 (9th Cir. 1994).

11 Some appellate courts have determined that the “properly joined and served” language in  
 12 § 1441(b)(2) renders the statute clear and unambiguous, allowing snap removal before any  
 13 defendant is served. However, not all courts agree. Many judges from this district reason that the  
 14 word “any” in “any of the parties in interest properly joined and served” necessarily means that  
 15 the statute assumes one party has been served. 28 U.S.C. § 1441(b)(2) See Wells Fargo Bank,  
 16 N.A. v. Old Republic Title Ins. Grp., Inc., No. 2:20-cv-00461-JCM-NJK, 2020 WL 5898779, at  
 17 \*2 (D. Nev. Oct. 5, 2020). The fact that reasonable jurists differ on the statute’s language  
 18 evidences its ambiguity. Whether the language is ambiguous or not, Chicago Title’s  
 19 interpretation would render the forum defendant rule impotent.

20 The purpose of the removal power is to “protect non-forum litigants from possible state  
 21 court bias in favor of forum-state litigants.” Gentile v. Biogen Idec, Inc., 934 F.Supp.2d 313, 319  
 22 (D. Mass. Feb. 21, 2013). Forum defendants are not at such a risk and their presence  
 23 “presumably mitigates concerns of state-court bias toward the plaintiff.” HSBC Bank, 508  
 24 F.Supp.3d at 789. The language regarding a defendant who is “properly joined and served” was  
 25 added to the removal statute in 1948. Gentile, 934 F.Supp.2d at 319. The Gentile court’s review  
 26 of Supreme Court precedent at that time “suggests the purpose of the ‘properly joined and

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 28 <sup>3</sup> One case disagrees with the other courts in the District and ruled that remand was improper. U.S. Bank,  
N.A. as Tr. to Wachovia Bank Nat’l Assoc. v. Fidelity Nat’l Title Grp., Inc., No. 2:21-cv-00339-GMN-VCF (D. Nev.  
 Nov. 29, 2021).

1 served' language was to prevent plaintiffs from defeating removal through improper joinder of a  
 2 forum defendant," not to give defendants a loophole to avoid the forum defendant rule. Id. at  
 3 319–20. Snap removal prior to service does not aid in preventing the defeat of removal through  
 4 improper joinder.

5 The Court finds that adopting Chicago Title's interpretation of the statute would  
 6 "undercut the clear purpose" of the forum defendant rule and encourage defendants to hijack a  
 7 plaintiff's choice of forum by racing to remove prior to service. Albertson's, Inc., 42 F.3d at 545.  
 8 The Court will not apply the statute in a way that would "eviscerate the purpose of the forum  
 9 defendant rule." Mass. Mut. Life Ins. Co. v. Mozilo, 2012 WL 11047336, \*2 (C.D. Cal. June 28,  
 10 2012) (citation omitted). By remanding to state court, the Court "provides some measure of  
 11 protection for a plaintiff's choice of forum" while interpreting the statute in favor of remand, as  
 12 required. HSBC Bank, 508 F.Supp.3d at 789 (quoting Gentile, 934 F.Supp.2d at 319); Gaus, 980  
 13 F.2d at 566.

14 C. HSBC Bank Trustee is not Entitled to Attorney's Fees

15 28 U.S.C. § 1447(c) provides that "[a]n order remanding the case may require payment of  
 16 just costs and any actual expenses, including attorney fees, incurred as a result of the removal."  
 17 The decision to award attorney fees is left to the discretion of the court. Martin v. Franklin  
 18 Capital Corp., 546 U.S. 132, 139 (2005). "[A]bsent unusual circumstances, courts may award  
 19 attorney's fees under § 1447(c) only [when] the removing party lacked an objectively reasonable  
 20 basis for seeking removal." Martin, 546 U.S. at 136. Therefore, courts in the Ninth Circuit assess  
 21 the clarity of the relevant law to determine whether there was an objectively reasonable basis for  
 22 removal. See Lussier v. Dollar Tree Stores, Inc., 518 F.3d 1062, 1066 (9th Cir. 2008) ("[T]he test  
 23 is whether the relevant law clearly foreclosed the defendant's basis of removal.").

24 HSBC Bank argues that Chicago Title has engaged in jurisdictional gamesmanship  
 25 removing every title insurance case immediately after it is filed. HSBC Bank highlights the  
 26 consensus among the District's judges that the tactic contorts the meaning and purpose of the  
 27 removal statute. However, the propriety of snap removal is a contested issue with supporting  
 28 caselaw that the Ninth Circuit has not ruled on. Because Chicago Title had an objectively

1 reasonable basis for removal, the Court declines to award HSBC Bank the fees and costs it  
2 incurred because of the removal.

3 IV. Conclusion

4 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Remand (ECF #6) is  
5 **GRANTED.**

6 IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney Fees (ECF #7) is  
7 **DENIED.**

8 Dated this 25th day of March, 2022.

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12 Kent J. Dawson  
13 United States District Judge  
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